

**THE DISTRICT OF COLUMBIA
DEPARTMENT OF BANKING AND FINANCIAL INSTITUTIONS**

NOTICE OF FINAL RULEMAKING

The Interim Commissioner of the Department of Banking and Financial Institutions, pursuant to the authority set forth in section 513 of the 21st Century Financial Modernization Act of 2000, effective June 9, 2001 (D.C. Law 13-308; D.C. Official Code § 26-131.13 (2001)) (“Act”), hereby gives notice that final rulemaking action was taken to adopt the following rules. These rules amend Title 26A, “Banking and Financial Institutions” of the District of Columbia Municipal Regulations to add a new chapter, “Chapter 18 Automated Teller Machines”. The proposed rules provide for the registration, examination, investigation, and supervision of operators of automated teller machines in the District of Columbia. The proposed rules also set forth the disclosure requirements for surcharges on automated teller machines and point of sale terminals. No changes have been made to the text of the proposed rules as published with the Notice of Proposed Rulemaking in the D.C. Register on October 3, 2003, at 50 DCR 8214. Final action to adopt these rules was taken on November 25, 2003. These final rules will become effective upon publication of this notice in the D.C. Register.

CHAPTER 18. AUTOMATED TELLER MACHINES

1800 SCOPE AND APPLICABILITY

- 1800.1 Except as provided in §1800.2, this chapter shall apply to any person who operates an automated teller machine or point of sale terminal in the District of Columbia.
- 1800.2 This chapter shall not apply to any commercial bank, savings bank, savings and loan association, credit union, or trust company incorporated or chartered under the laws of the United States, any state of the United States, or the District of Columbia.

1801 REGISTRATION OF AUTOMATED TELLER MACHINES

- 1801.1 No person shall operate an automated teller machine unless a registration application is filed and approved by the Commissioner.
- 1801.2 A registration application shall be filed on a registration form as prescribed by the Commissioner and accompanied with a non-refundable registration fee in the amount of five hundred dollars (\$500) for the first automated teller machine operated by the operator in the District and fifty dollars (\$50) for each additional automated teller machine operated by the operator in the District.

- 1801.3 The registration application shall contain, at minimum, the following information:
- (a) The name and address of the applicant;
 - (b) The type of business structure;
 - (c) The state of incorporation;
 - (d) The name of a registered agent if the applicant is a corporation, association, entity or partnership operating under the laws of a state other than the District of Columbia;
 - (e) The safety policies and procedures for each automated teller machine to be operated by the applicant;
 - (f) The number of automated teller machines that will be operated in the District by the applicant and the date of installation of each automated teller machine; and
 - (g) The fees charged for each service provided or offered by each automated teller machine operated in the District.
- 1801.4 The Commissioner may require additional information to be included or submitted with a registration application.
- 1801.5 The Commissioner shall approve or deny a registration application not later than sixty (60) days from the date of filing the registration application.
- 1801.6 The registration of an automated teller machine shall expire one year from the date the registration application was approved by the Commissioner.

1802 RENEWAL OF REGISTRATION APPLICATION

- 1802.1 In order to renew a registration required pursuant to this chapter, an operator shall file a renewal registration application, on a form prescribed by the Commissioner, for the operation of an automated teller machine not later than ninety (90) days before the expiration date of the operator's current registration for the automated teller machine.
- 1802.2 The renewal registration application shall be accompanied with a non-refundable renewal registration fee in the amount of five hundred dollars (\$500) for the first automated teller machine operated by the operator in the District and fifty dollars (\$50) for each additional automated teller machine operated by the operator in the District.

1802.3 The Commissioner shall approve or deny the renewal registration application not later than thirty (30) days from the date of filing the renewal registration application, except if the Commissioner extends the time within the thirty (30) day time frame for approving or denying a renewal.

1803 REVOCATION AND SUSPENSION OF REGISTRATION

1803.1 Except as provided in § 1803.2, the Commissioner may revoke or suspend the registration of an operator upon a finding that the operator:

- (a) Violated any applicable District or federal law, rule or regulation;
- (b) Made a material misstatement in the registration application or any other document or statements provided to the Department;
- (c) Engaged in any fraudulent, dishonest, or unsafe activity in connection with the operation of an automated teller machine;
- (d) Demonstrated a lack of competence in connection with the operation of an automated teller machine; or
- (e) Violated any order or written agreement issued by the Commissioner.

1803.2 Except as provided by § 1803.3, the Commissioner, prior to taking action pursuant to § 1803.1, shall issue and serve, by U.S. Mail, on an operator written notice of his or her intent to revoke or suspend the operator's registration. A notice of intent to revoke or suspend an operator's registration shall include:

- (a) The reasons for the proposed action;
- (b) The date by which the operator may file a written response with the Commissioner; and
- (c) The date by which the Commissioner will issue a final order revoking or suspending the operator's registration in the event the operator fails to respond to the notice of intent to revoke or suspend an operator's registration by the date provided in the notice of intent.

1803.3 The Commissioner may issue a temporary order revoking or suspending an operator's registration without providing the operator with a prior notice of intent if the Commissioner determines that the operator's continued operation may be a danger to public safety or health.

1803.4 A temporary order shall provide the operator with an opportunity to make a written response in accordance with § 1803.5.

- 1803.5 An operator may file a written response to a notice of intent to revoke or suspend the operator's registration or a temporary order within 15 days from the date of service of the notice of intent or temporary order. The written response shall include:
- (a) An explanation of why the proposed action or temporary order is not warranted; and
 - (b) Any other relevant information, mitigating circumstance, documentation, or other evidence in support of the operator's position. The failure by an operator to file a written response with the Commissioner to a notice of intent or a temporary order within the specified time period, shall constitute a waiver of the opportunity to respond and shall constitute consent to a final order under § 1803.1 or § 1803.3.
- 1803.6 The Commissioner, after considering any response filed pursuant to § 1803.5, shall issue a final order pursuant to § 1803.1 or § 1803.3 within fifteen (15) business days after receiving a response from the operator pursuant to § 1803.5, or after the deadline upon which a response from the operator was due pursuant to § 1803.5.
- 1804 RECORD KEEPING**
- 1804.1 An operator shall not make any material false or misleading statements or material omissions in its records or any other documents filed with the Commissioner.
- 1805 DISCLOSURE OF SURCHARGES**
- 1805.1 A disclosure of surcharges on an automated teller machine and point of sale terminal shall be printed or typewritten in the English language. A disclosure of surcharges on an automated teller machine shall be provided electronically.
- 1805.2 A point of sale terminal shall have the disclosure of surcharges displayed on the front side of the point of sale terminal and the language shall be printed or typewritten in a conspicuous manner.
- 1806 PROOF OF REGISTRATION**
- 1806.1 An operator of an automated teller machine shall affix a registration decal, issued by the Commissioner, to each automated teller machine operated in the District and registered pursuant to the Act.
- 1806.2 The registration decal required pursuant to § 1806.1 shall be affixed to the front side of the automated teller machine as directed by the Commissioner.

1806.3 No automated teller machine shall be operated in the District without a valid registration decal issued by the Commissioner.

All persons interested in commenting on the subject matter of the proposed rules should file comments in writing not later than thirty (30) days after the date of publication of this notice in the D.C. Register. Comments should be submitted to the Office of the General Counsel, Department of Banking and Financial Institutions, 1400 L Street, NW, Suite 400, Washington, DC 20005. Copies of the proposed rules may be obtained by writing to the address stated above.